

TTAB



06-16-2003

U.S. Patent & TMOfo/TM Mail Rcpt Dt. #74

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: June 5, 2003

SMARTWALL GROUP, LLC
2601 ELLIOT AVENUE - SUITE 4200
SEATTLE, WA 98121

Registration No. 2152368

Cancellation No. 92042054

JOEL T. BERES
STITES & HARBISON
400 WEST MARKET STREET, SUITE 1800
LUOISVILLE, KY 40202-3352

THE ARTGLO COMPANY

v.

SMARTWALL GROUP, LLC

Veronica White, Legal Assistant

A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that became effective October 9, 1998. See Notice of Final Rulemaking published in the *Official Gazette* on September 29, 1998 at 1214 TMOG 145. Slight corrections to the rules, resulting in a correction notice, were published in the *Official Gazette* on October 20, 1998 at 1215 TMOG 64. A copy of the recent amendments to the Trademark Rules, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), is available at <http://www.uspto.gov>.

A copy of every paper or communication filed by the registrant regarding this matter must be mailed to the person or persons named below.

06 JUN 27 2003

ANSWER IS DUE FORTY DAYS after the mailing date hereof.
(See Patent and Trademark Rule 1.7 for expiration date
falling on Saturday, Sunday, or a holiday).

Discovery and testimony dates are set as indicated below.
In each instance, a copy of the transcript of testimony,
together with copies of documentary exhibits, must be served
on the adverse party within thirty days after completion of
the taking of testimony. Trademark Rule 2.125.

Discovery period to open:	June 25, 2003
Discovery period to close:	December 22, 2003
30-day testimony period for party in position of plaintiff to close:	March 21, 2004
30-day testimony period for party in position of defendant to close:	May 20, 2004
15-day rebuttal testimony period for plaintiff to close:	July 04, 2004

Briefs shall be filed in accordance with Trademark Rule
2.128(a) and (b). An oral hearing will be set only upon
request filed as provided by Trademark Rule 2.129.

NOTE: This proceeding is subject to the pilot project on
telephone disposition of interlocutory matters. See the
Official Gazette notice titled "*Pilot Project on Telephone
Disposition of Interlocutory Matters in Inter Partes Cases
Before the Trademark Trial and Appeal Board*," 1213 TMOG 151
(August 18, 1998). A hard copy of the notice announcing the
pilot project is available for a fee from the Superintendent
of Documents, U.S. Government Printing Office, Washington,
D.C. 20402 (Telephone (202) 512-1800). The notice is also
available at <http://www.uspto.gov>. Any interlocutory matter
proposed for discussion or resolution during a Board
approved phone conference may be decided adversely to any
party which fails to participate.

If the parties to this proceeding are also parties to other
Board proceedings involving related marks or, during the
pendency of this proceeding, they become parties to such
proceedings, they should notify the Board immediately, so
that the Board can consider consolidation of proceedings.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration No. 2,152,368
For the mark SMARTWALL
Date Registered: April 21, 1998
Registrant: Smartwall Group, LLC



04-17-2003
U.S. Patent & TMO/TM Mail Rcpt Dt. #66

The Artglo Company,
Petitioner,

v.

Smartwall Group, LLC,
Registrant

Cancellation No.

92042054

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PETITION TO CANCEL

The Artglo Company, a corporation organized and existing under the laws of the State of Ohio, with a principal place of business at 2651 Johnstown Road, Columbus, Ohio 43219 (hereinafter "Petitioner"), believes that it is or will be damaged by continued registration of the mark shown in Registration No. 2,152,368 and hereby petitions to cancel that registration.

As grounds for cancellation, Petitioner submits the following:

1. Petitioner seeks cancellation of Registration No. 2,152,368, issued on April 21, 1998, for the mark SMARTWALL for use with "walls, displays, enclosures, wall frames, display frames, display panels, display walls, display booths, enclosure frames, enclosure wall panels, of metal" (the "Subject Registration"). The SMARTWALL mark as set forth in the Subject Registration is sometimes referred to herein as the "Registered Mark."

2. To the best of Petitioner's knowledge, the name and address of the owner of the Subject Registration (the "Registrant") are: Smartwall Group, LLC, 2601 Elliot Avenue Suite

4200, Seattle, Washington 98121. This information was obtained from the records of the U.S. Patent and Trademark Office (the "PTO"), and Petitioner has no other information concerning the Registrant's name and address beyond that reflected in the PTO's records.

3. On or about June 12, 2002, Petitioner filed with the PTO an application to register the mark SMART WALLS for "design and manufacture of modular wall and signage systems," which has been assigned Serial No. 78/135,151. The '151 Application is sometimes referred to herein as "Petitioner's Application," and the SMART WALLS mark as set forth in Petitioner's Application is sometimes referred to herein as "Petitioner's Mark." The Application for the mark SMART WALLS is currently pending before the PTO. A true copy of the prosecution history to date of Petitioner's Mark is attached hereto.

4. In the course of the prosecution of Petitioner's Application, the Trademark Examining Attorney cited the Subject Registration as one which would preclude registration of Petitioner's Mark under Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d), on the ground that Petitioner's Mark so resembles the Registered Mark as to be likely, when used on or in connection with Petitioner's services, to cause confusion, or to cause mistake, or to deceive. The Examining Attorney tentatively refused registration of Petitioner's Mark on that basis.


5. Based on Petitioner's investigation, Petitioner is informed and believes, and on that basis alleges, that Registrant has discontinued use of the Registered Mark, with intent not to resume such use. Petitioner has attempted to locate any indication of current use by Registrant, and has been unable to do so.

6. Petitioner requests that the Subject Registration be cancelled under Section 14(3) of the Lanham Act, 15 U.S.C. §1064(3), on the ground that the Registered Mark has been abandoned.

7. Petitioner will be damaged by continued registration of the Registered Mark for use in association with the services listed in the Subject Registration in that, should the Subject Registration be maintained, Petitioner will or may be unable to obtain registration of Petitioner's Mark SMART WALLS as set forth in Petitioner's Application.

WHEREFORE, Petitioner prays that Registration No. 2,152,368 be cancelled.

Dated: March 31, 2003



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April 15, 2003

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04-17-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #66

RE: Petition to Cancel
Trademark Registration No. 2,152,368
For the mark: SMARTWALL
Date Registered: April 21, 1998
Registrant: Smartwall Group, LLC

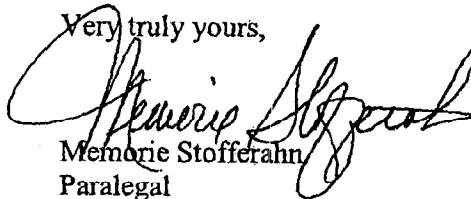
Dear Commissioner:

Enclosed for filing are the following documents in connection with The Artglo Company's Petition to Cancel relating to the above-referenced trademark registration:

1. Original and one copy of the Petition to Cancel;
2. Check in the amount of \$300, payable to your order, for the filing fee; and
3. Postcard acknowledging receipt.

Please contact me at the above address and telephone number if you need anything further concerning this petition.

Very truly yours,


Memorie Stofferahn
Paralegal

Enclosures
cc: Grant Beavers

ja